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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/700,565	07/25/96	GRUENBERG M	6870-500B

18M1/0722  
STEPHANIE SEIDMAN  
BROWN MARTIN HALLER & MCCLAIN  
1660 UNION STREET  
SAN DIEGO CA 92101-2926

EXAMINER  
SCHWADRON, R

ART UNIT PAPER NUMBER  
1816

DATE MAILED: 07/22/97

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



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This is a communication from the examiner in charge of your application.  
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### OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 6 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-153 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-153 are subject to restriction or election requirement.

#### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

15. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-17,22-35 are drawn to methods for making immune cells, classified in Class 435, subclass 2.

II. Claims 36-41 are drawn to a method of making virally purged CD4+ cells, classified in Class 436, subclass 536.

III. Claims 42-45,55-67,72,147-152 are drawn to cell compositions, classified in Class 424, subclass 93.71.

IV. Claims 18-21,46-54,68-71,73-146,153 drawn to methods of treatment, classified in Class 424, subclass 93.7 and

16. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)). In the instant case the composition can be made by methods wherein IL-2 is used.

17. Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)). In the instant case the composition can be made by methods using antibody treatment to kill virally infected cells

18. Inventions I, II and IV are different methods. These inventions require different ingredients and process steps to achieve different goals. Invention I is a method of making immune cells, while invention II is a method of making virally purged CD4+ cells, while invention III is an in vivo method of treatment. Therefore they are novel and unobvious in view of each other and are patentably distinct.

19. Inventions III and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the

product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the claimed cells can be used as a source of TCR for the immunopurification of TCR.

20. Because these inventions are distinct for the reasons given above and the search required for any group from Groups I-V is not required for any other group from Groups I-V and Groups I-IV have acquired a separate status in the art as shown by their different classification and divergent subject matter, restriction for examination purposes as indicated is proper.

21. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

22. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

23. Papers related to this application may be submitted to Group 180 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Papers should be faxed to Group 180 at (703) 305-3014.

24. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Dr. Ron Schwadron whose telephone number is (703) 308-4680. The examiner can normally be reached Tuesday through Friday from 8:30 to 6:00. The examiner can also be reached on alternative Mondays. A message may be left on the examiners voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ms Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 180 receptionist whose telephone number is (703) 308-0196.

Serial No. 08/566847  
Art Unit 1816

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**RONALD B. SCHWADRON**  
**PRIMARY EXAMINER**  
**GROUP 1800**

A handwritten signature in dark ink, appearing to read 'R. Schwadron', written in a cursive style.

Ron Schwadron, Ph.D.  
Primary Examiner  
Art Unit 1816  
July 21, 1997